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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/659,112	09/11/2000	Arthur Cameron Wilson	9D-RG-19254	4522

7590 08/17/2004

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EXAMINER

COCKS, JOSIAH C

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 08/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/659,112

Applicant(s)

WILSON, ARTHUR CAMERON

Examiner

Josiah Cocks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on amendment filed 5/13/2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-12 and 14-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-12, and 14-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Receipt of applicant's amendment filed 5/13/2004 is acknowledged.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 and 3-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Atanasio* (US # 5,103,799) in view of *Koziol* (US #4,848,217).

Atanasio discloses in Figures 1-4 a rack similar to that described in applicant's claims 1 and 3-8 including a frame (10) with a flat first portion (the portions of the rack bounded by side member 14, note Fig. 3) and a second portion that is considered by the examiner to extend obliquely to the first portion (see Fig. 3 and note that end member 18 is not numbered in the figure but is illustrated as extending obliquely upward on the right side of member 14). *Atanasio* further discloses a support system including at two first legs (40) and two second legs (42) rearwardly displaced from the first legs wherein are both attached to the first portion (see Figs. 2 and 3). *Atanasio* also discloses that the first portion has a front edge (see Fig. 2 and end member 18 on portion of frame 10 near frame 12) and a planar surface (see Fig. 3), and portions (28) with connecting portion (18a)

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extending obliquely upward. The examiner considers that the portions (28) would each function as handle (i.e. thus forming two handles), which extend from the first portion and are adjacent the front edge (see Fig. 2).

Atanasio also discloses that the first portion includes a plurality of first rods (18) and second rods (14 and 16) attached substantially perpendicularly to the first rods wherein the first and second rods are substantially co-planar on the first portion of the rack (see Figs. 2 and 3)

In regard to claim 8 and the recitation that the rack is "configured to be used as a trivet on a countertop," is simply a statement of intended use and given no patentable weight. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In this case, the rack of *Atanasio* would function as a trivet.

In regard to the recitation that the rack is an oven rack, while the rack of *Atanasio* is disclosed as being used as a charcoal grill, a person of ordinary skill in the art would understand that this rack could also be used in an oven and may be considered an oven rack. *Koziol* is cited to support this assertion. *Koziol* discloses a cooking rack in the same field of endeavor as the rack of *Atanasio* and *Koziol* notes that such a rack may be employed in any type of cooking device such as an oven or a charcoal grill.

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4. Claims 9-12 and 14-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Atanasio* in view of *Koziol* as applied above and further in view of *Carpenter et al.* (US # 3,266,484) and Merriam Webster's Collegiate Dictionary, Tenth Edition ("dictionary").

Atanasio in view of *Koziol* teach most of the limitations of claims 9-12 and 14-19 including legs that are attached to the first portion. The examiner considers that a person of ordinary skill in the art would consider that these legs are fixedly attached to the first portion as recited in applicant's claim 9. In support of this conclusion the examiner notes that the dictionary defines the term "fixed" as "securely placed or fastened." (see definition of "fixed" in the dictionary, page 441). Though the legs (40 and 42) of *Atanasio* may pivot to a storage position (as shown in Fig. 4) the legs are attached to the frame (10) and function to securely support the frame (10) and any items placed on this frame. The examiner therefore considers that these legs are considered to be securely fastened to the frame and are properly considered to be fixedly attached.

Atanasio does not disclose an oven with a cooking chamber comprising a bottom surface and at least three sides. However, *Koziol* is cited to show that does the cooking racks, such as that of *Atanasio*, are intended to be used in an oven (see Abstract) and would placed on the bottom surface thereof. The examiner considers that an oven as noted in *Koziol* would inherently have a cooking chamber with a bottom surface, at least three sides, and a hinged door, as this is conventional structure of an oven. *Carpenter et al.* is cited to simply to show such conventional oven structure including a bottom surface, at least three sides, and a door hingedly attached to the combustion chamber (see Fig. 1). Placing the rack of *Atanasio* in a conventional oven, such as that of *Carpenter et*

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al., would result in an oven rack that is configured to be stabilized against the oven door and fit within the combustion chamber. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made that the cooking rack of *Atanasio* would be placed on the bottom surface of an oven, such as that disclosed in *Carpenter et al.*, for the purpose of supporting items to be cooked in the oven.

In regard to claim 19 and the recitation that the rack is "configured to be used as a trivet on a countertop," is simply a statement of intended use and given no patentable weight. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In this case, the rack of *Atanasio* would function as a trivet.

Response to Arguments

5. Applicant's arguments filed 5/13/2004 have been fully considered but they are not persuasive. As noted above, the examiner does not consider the limitations added in the amendment filed 5/12/2004 to patentably define over the prior art of record. Applicant appears to argue that *Anatasio* and *Koziol* are non-analogous art and are not combinable. To support this assertion application notes that the primary class of *Koziol* is class 99/426, whereas the primary class of *Anatasio* is 126/9R. Both *Koziol* and *Anatasio* disclose racks that function for the same purpose of supporting food products for cooking. The examiner also notes that both references have either original classification

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or cross-classification in class 99. These references are not considered to be non-analogous art and properly combinable.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (703) 305-0450. The examiner can normally be reached on weekdays from 7:30 AM to 5:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus, can be reached at (703) 308-1935. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

jcc
August 16, 2004


JOSIAH COCKS
PRIMARY EXAMINER
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